Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

FINAL ORDER MO-1584-F

Appeal MA-010199-2

City of Toronto

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NATURE OF THE APPEAL:

This is an appeal from a decision of the City of Toronto (the City), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to her complete tenancy file with the City. In her request, she stated that she needed the file because she had sued the City and there was an impending trial.

The City issued a decision in which it granted access to certain records in their entirety, and other records with portions severed. In its decision, the City referred to the discretionary exemptions in section 7(1) (advice or recommendations) and section 12 (solicitor-client privilege) of the *Act*, and the mandatory exemption in section 14(1) (unjustified invasion of personal privacy), with reference to the presumptions in sections 14(3)(c) and (f). The City also applied sections 38(a) and (b) of the *Act* (discretion to refuse a requester's own information).

The City also provided a figure for photocopying costs which it requested the appellant to pay if she wished to proceed with her request.

After the decision, the appellant made a request to the City for a fee waiver under the *Act*. As of the time this matter was referred to adjudication, the City had not made a decision on that request, so if there are any issues about fee waiver, they are not before me.

During mediation through this office, the City agreed to release additional records in full to the appellant.

I sent a Notice of Inquiry to the City, initially, inviting it to make submissions on the issues in dispute. Following the issuance of the Notice of Inquiry, this office was informed that carriage of this appeal has been transferred to the Toronto Community Housing Corporation (the TCHC). The TCHC, which was incorporated to take the place of the Metropolitan Toronto Housing Authority, is a separate institution for the purposes of the *Act*.

The TCHC sent representations in response to the Notice of Inquiry, portions of which it asked be withheld from the appellant. I accepted this request with respect to certain portions of its representations and, in Interim Order MO-1553-I, I considered and ruled on its request to withhold other portions.

Subsequently, by letter dated May 16, 2002, the appellant was provided with the non-confidential representations of the TCHC and invited to make representations in response. The appellant was initially requested to provide her representations by June 6, 2002. At the appellant's request, this deadline was extended and she ultimately provided her representations to this office on August 14, 2002. In these representations, the appellant states, among other things:

> Last week I applied to Ontario Legal Aid for a lawyer to assist me in this matter. The respondent utilizes the legal expertise of [named individual], Legal Counsel. I am a private citizen who has no legal training. Therefore, the case is heavily weighted against me. From a democratic standpoint, you would be well-advised to give me extra time to consult with a Legal Aid solicitor.

It should be noted that the appellant did not make a request for an extension of time in this appeal until July 23, 2002, well after the initial deadline for her representations. Further, according to the appellant, she did not make an application to Legal Aid Ontario until the second week of August, 2002, despite the fact that she has been in a position to seek legal assistance on this appeal since she filed it in August of 2001. In the circumstances, I found no good reason to delay this appeal by granting a further indefinite extension of time.

RECORDS:

Of more than 600 pages of records located by the City in response to the request, a little more than 60 remain in issue. On my review of the file, it appears that page 281 is identical to page 180, which was released by the City to the appellant in full on September 7, 2001. Page 281 is accordingly also no longer in issue. The records remaining in issue consist of correspondence, handwritten notes, printouts of email messages, memoranda, computer printouts, Cityhome forms, fax transmissions, and other documents relating to the appellant's tenancy in a City-owned property. The exemptions applied by the City and now relied on by the TCHC are as follows:

Sections 7(1)/38(a)	Page 219 and the severed portions of pages 394, 404, 420 and 464
Sections 12/38(a)	Pages1-30, 251, 252, 253, 255, 257 to 260, 477 to 482, 485, 486, 489, 490, 540, 541, 550 and 551
Sections 14(1)/38(b)	Pages1-30, 153, 155, 567, 568, 583, 588 and 600 and the severed portions of pages 154, 156 and 589

DISCUSSION:

PRELIMINARY ISSUE: RESPONSIVENESS

Pages 14 to 17 are records relating to computer training opportunities for staff with the City. In its representations, the TCHC submits that they were not properly included within the tenant file to which the appellant has requested access, and are not responsive to her request. It is submitted that they are records that likely made their way into the appellant's tenancy file through misfiling or inadvertence. The TCHC makes the same submission with respect to pages 29 to 30, which are an application for Rent Geared-to-Income Assistance and supporting documentation. The application is made by someone other than the appellant and there is no information pertaining to the appellant anywhere in these records.

The appellant states simply that as these records are in her file, she should have access to them.

In Order P-880, former Adjudicator Anita Fineberg considered the issue of relevancy of records and responsiveness:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I am satisfied that pages 14 to 17 and 29 to 30 are not reasonably related to the appellant's request. Although it is true that, strictly speaking, they were found in her "tenancy file", it is clear that they do not relate whatsoever to the appellant or her tenancy, and were placed in that file by mistake. Accordingly, I find that pages 14 to 17 and 29 to 30 are not responsive to the request, and do not form part of the appeal before me.

PERSONAL INFORMATION

In order to assess the application of the provisions relied on by the TCHC, it is necessary to determine whether the records contain personal information, and to whom that personal information relates.

Under section 2(1) of the *Act*, "personal information" is defined as recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

On my review, I find that the records at pages 3 to 13, 18 to 28, 219, 253 to 255 (there is no page 254), 257 to 260, 394, 420, 464, 477, 485, 490, 541 and 551 contain the personal information of the appellant but not of any other individuals.

The records at pages 153 to 154 (which are the front and back of a page), 155 to 156 (which are also the front and back of a page), 251 to 252, 404, 478 to 482 and 589 contain information of the appellant as well as of individuals other than the appellant.

The records at pages 567, 583, 588 and 600 contain the personal information of individuals other than the appellant, and not of the appellant.

I also find that pages 1 and 2, 486, 489, 540, 550 and 568 do not contain the personal information of any identifiable individual. The handwritten notations on page 2 are almost illegible, and appear to contain the partial names of some individuals. However, there is no discernible information about these individuals. Pages 1, 486, 489, 540 and 550 do not refer to any identifiable individuals, or refer to individuals in only an employment and not a personal

capacity (see Order P-1538.rec). Page 568 is a blank form from the then Ministry of Education and Training.

In her representations, the appellant has made submissions about some of the specific records, which are based on a mistaken understanding as to their nature and contents. This is not surprising, since the appellant has not reviewed the records. This misapprehension will be clarified for the appellant upon her receipt of some of the records, as the result of my decision is that certain records should be disclosed to the appellant. With respect to others that will not be disclosed, and for the appellant's benefit, I note here that contrary to her understanding, page 26 of the records is not a letter of complaint against the appellant. Pages 29 and 30 are not her application for assistance, but are another individual's application. These pages do not refer to the appellant at all.

DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION

As most of the records contain the personal information of the appellant, section 36(1) of the *Act* is applicable to this appeal. Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38, however, provides a number of exceptions to this general right of access. Under section 38(a) of the *Act*, the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in, among others, sections 7 and 12 would apply to the disclosure of that information. In this case, the TCHC has relied on sections 7 and 12, in conjunction with section 38(a), to deny access to the records.

Section 38(b) provides another exception to the general right to have access to one's own personal information. Under section 38(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and an institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy [with reference to section 14(1)], the institution has the discretion to deny the requester access to that information.

I shall begin with a discussion of the application of sections 7 and 38(a) to the records, then sections 12 and 38(a). After that, I will consider to what extent sections 38(b) and 14(1) are applicable to the records.

ADVICE OR RECOMMENDATIONS

Section 7(1) of the *Act* provides:

> A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Section 7(1) is subject to the exceptions listed in section 7(2).

A number of previous orders have established that advice or recommendations for the purpose of section 7(1) [or its provincial equivalent] must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process [Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)*, Toronto Doc. 721/92 (Ont. Div. Ct.)]. Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given also qualifies for exemption under section 7(1) of the *Act* (Order P-233).

In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making". Put another way, its purpose is to ensure that:

> ... persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure [Orders 24, P-1363].

The TCHC submits that certain information on pages 219, 394, 404, 420 and 464 of the records contain advice or recommendations within the meaning of section 7(1). On my review of the information at issue, I find that the information does not qualify for exemption under this section. Rather than relating to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process, these records contain instructions or directions from one employee to another, or records decisions made by an employee about a course of action (see Order P-1535).

I find, therefore, that page 219 and the severed portions of 394, 404, 420 and 464 do not qualify for exemption under section 7(1) of the *Act*. As section 7(1) does not apply, it is unnecessary to determine whether the TCHC properly applied section 38(a) to deny access to this information.

No other exemptions have been claimed for these pages. Accordingly, the appellant is entitled to have access to them, with the exception of a portion on page 404, which I find contains the personal information of an individual other than the appellant, and which I will discuss further below in the section entitled "Invasion of Privacy."

SOLICITOR-CLIENT PRIVILEGE

Section 12 of the *Act* states:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Section 12 encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for section 12 to apply, it must be established that one *or* the other, or both, of these heads of privilege apply to the records at issue. The TCHC claims that the records at pages 1-30, 251 to 252, 253 to 255, 257 to 260, 477 to 482, 485, 486, 489 to 490, 540 to 541 and 550 to 551 qualify for exemption under section 12. As I have indicated, pages 14 to 17 and 29 to 30 are no longer in issue.

Solicitor-client communication privilege

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

The Supreme Court of Canada has described this privilege as follows:

> ... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ... [Descôteaux v. Mierzwinski (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to "a continuum of communications" between a solicitor and client:

> . . . the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409].

Litigation privilege

Litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation [Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:

> The "dominant purpose" test was enunciated [in *Waugh* v. *British Railways Board*, [1979] 2 All E.R. 1169] as follows:
>
> > A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.
>
> It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.
>
> . . . . .
>
> [For this privilege to apply], there must be more than a vague or general apprehension of litigation.

In Order MO-1337-I, Assistant Commissioner Tom Mitchinson found that even where records were not created for the dominant purpose of litigation, copies of those records may become privileged if they have "found their way" into the lawyer's brief [see *General Accident*; *Nickmar Pty. Ltd. v. Preservatrice Skandia Insurance Ltd.* (1985), 3 N.S.W.L.R. 44 (S.C.); *Hodgkinson v. Simms* (1988), 55 D.L.R. (4th) 577 (B.C. C.A.)]. The court in *Nickmar* stated the following with respect to this aspect of litigation privilege:

> . . . the result in any such case depends on the manner in which the copy or extract is made or obtained. If it involves a selective copying or results from research or the exercise of skill and knowledge on the part of the solicitor, then I consider privilege should apply.

In Order MO-1337-I, the Assistant Commissioner elaborated on the potential application of the *Nickmar* test:

> The types of records to which the *Nickmar* test can be applied have been described in various ways. Justice Carthy referred to them in *General Accident* as "public" documents. *Nickmar* characterizes them as "documents which can be obtained elsewhere", and [*Hodgkinson*] calls them "documents collected by the ... solicitor from third parties and now included in his brief". Applying the reasoning from these various sources, I have concluded that the types of records that may qualify for litigation privilege under this test are those that are publicly available (such as newspaper clippings and case reports), and others which were not created with the litigation in mind. On the other hand, records that were created with real or reasonably contemplated litigation in mind cannot qualify for litigation under the *Nickmar* test and should be tested under "dominant purpose".

Analysis

I am satisfied that the records at pages 3 to 13, 18 to 20, 22 to 28, 251 to 252, 253 to 255, 257 to 260, 477 to 482, 485, 486, 489 to 490, 540 to 541 and 550 to 551 meet the requirements for exemption under the litigation privilege category of section 12, in that they were created for the dominant purpose of existing or reasonably contemplated litigation, or meet the *Nickmar* test for litigation privilege.

The material before me indicates that legal representatives for the appellant began corresponding with the City as early as 1993 over the appellant's concerns over her tenancy. She then began a Small Claims Court action against the City in 2000, followed by a complaint to the Ontario Human Rights Commission in 2001. The information in the above records appears to have been compiled or prepared in relation to the Small Claims Court action. Although some of the material pre-dated that action, it "found its way" into the City lawyer's brief in the manner described in *Nickmar* and in Order MO-1337-I.

The appellant has submitted that the litigation between her and the TCHC is no longer active. She has referred to the dismissal of her action. However, she has also indicated that she plans to appeal her case once she obtains her complete tenancy file. Further, it is clear that the complaint before the Ontario Human Rights Commission is still outstanding, and that this complaint relates to many of the same circumstances underlying her Small Claims Court action.

In these circumstances, I am satisfied that there is no issue of the potential loss of the litigation privilege by reason of the termination of litigation.

The appellant also submits in her representations that whether or not litigation privilege applies, she ought to have access to the information as it is in her file and refers to her. Further, she submits that this information is relevant to both her civil claim and her human rights complaint. It may well be that this information is relevant to the legal proceedings between the appellant and the TCHC. Rather than weighing against the application of the section 12 privilege to these

records, however, this supports the application of that privilege. In *General Accident Assurance Co. v. Chrusz, supra,* Mr. Justice Carthy, speaking for the majority, explained the purpose of litigation privilege:

> The origins and character of litigation privilege are well described by Sopinka, Lederman and Bryant in *The Law of Evidence in Canada* (Toronto: Butterworths, 1992), at p. 653:
>
> > . . . [The origin of litigation privilege] had nothing to do with clients' freedom to consult privately and openly with their solicitors; rather, it was founded upon our adversary system of litigation by which counsel control fact-presentation before the Court and decide for themselves which evidence and by what manner of proof they will adduce facts to establish their claim or defence, without any obligation to make prior disclosure of the material acquired in preparation of the case . . .

In Order PO-2006, Senior Adjudicator David Goodis commented that "litigation privilege is meant to protect the adversarial process by preventing counsel for a party from being compelled to prematurely produce documents to an opposing party or its counsel."

Consistent with the above, it is entirely within the scope of the litigation privilege for the TCHC to withhold records relevant to its defense against the appellant's civil claim and human rights complaint.

The TCHC has acknowledged that it is arguable that the solicitor-client privilege does not apply to page 21, a copy of the Endorsement Record of the claim between the appellant and the TCHC. The TCHC submits, however, that the Rules of the Small Claims Court prevent the disclosure and reliance on documents and statements made at pretrial conferences. The appellant submits that the Rules do not prevent the disclosure and reliance on documents and statements made at pretrial conferences.

I find that section 12 does not apply to exempt a public court record such as page 21. It may be that the Rules of the Small Claims Court (the Court) prohibit the parties from raising the matters discussed at a pre-trial conference at the trial of the matter (see section 13.02(3) of O.Reg. 258/98) but page 21, which is a document generated by the Court, serves to record orders made by the pre-trial judge and others, not to record the content of the discussion between the parties. In any event, the application of this rule of the Court is a separate issue from the application of solicitor-client privilege, as the rule speaks to the admissibility of settlement discussions at trial rather than solicitor-client privilege. Further, it is clear that the appellant is as aware of the information set out on page 21 as the TCHC. In the circumstances, I find that section 12 does not apply to exempt this information from disclosure.

No specific submissions have been made by the respondent about the application of section 12 to pages 1 and 2. On their face, there is nothing to establish that they were communications made confidentially for the purposes of legal advice, or that they were created for the dominant purpose of litigation. I am also not satisfied that it has been established that they meet the *Nickmar* test for litigation privilege. I find that pages 1 and 2 do not qualify for exemption under section 12.

In sum, I am satisfied that section 12 applies to exempt the information on pages 3 to 13, 18 to 20, 22 to 28, 251 to 252, 253 to 255, 257 to 260, 477 to 482, 485, 486, 489 to 490, 540 to 541 and 550 to 551 of the records. Pages 1 and 2 are not exempt under section 12. Because the appellant's own information is found in these records, section 38(a) applies. I am satisfied that the City exercised its discretion appropriately in refusing access to the information in these records.

INVASION OF PRIVACY

Because of my findings above in relation to pages 251 to 252 and 478 to 482, it is unnecessary to consider them in this portion of my decision.

As indicated above, I have found that the records at pages 153 to 154 (which are the front and back of a page), 155 to 156 (which are also the front and back of a page) 404 and 589 contain information of the appellant as well as of individuals other than the appellant. The City has released these pages to the appellant, with the exception of certain severed portions.

The records at pages 567, 583, 588 and 600 contain the personal information of individuals other than the appellant, and not of the appellant.

Although the TCHC claimed the application of sections 14(1)/38(b) for pages 1, 2 and 568, I have found that they do not contain the personal information of any individual. I have found above that section 12 does not apply to pages 1 and 2. Further, no other exemption claim has been made for page 568. Accordingly, pages 1, 2 and 568 are to be disclosed in their entirety to the appellant.

In relation to pages 153 to 154, 155 to 156, 404 and 589, section 38(b) provides an exception to the general right of the appellant to have access to her own personal information. As stated above, under section 38(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and an institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 38(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

In relation to pages 567, 583, 588 and 600, however, which contain the personal information of individuals other than the appellant only, section 38(b) does not apply. If the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the *Act* prohibits the TCHC from releasing this information.

In both these situations (where section 38(b) applies, and where it does not) sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) *[John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In this case, the TCHC relies on the presumptions in sections 14(3)(c), (d) and (f). These sections provide:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
> (d) relates to employment or educational history;
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

In relation to section 14(3)(c), the TCHC submits that it is in the enterprise of providing socially assisted housing. Where this exemption has been claimed, the issues primarily deal with the release of information which would serve to identify individuals in receipt of social assistance entitlements through their receipt of rent geared to income housing. On my review of the records, I am satisfied that information about individuals other than the appellant on pages 153 to 154, 155 to 156, 404, 588 and 589 falls under the presumption in section 14(3)(c) as it reveals their eligibility for social service benefits in the nature of rent subsidies.

As pages 153 to 154, 155 to 156, 404 and 589 contain the personal information of the appellant as well as of others, section 38(b) applies. I am satisfied that the TCHC has exercised its discretion appropriately in refusing access to the information it withheld in these records and has reasonably severed exempt information from non-exempt information, with one exception. I find that a portion of the severed information on page 404, which is not exempt under either section 7(1) or section 14(1)/38(b), can be readily severed from the exempt information.

As page 588 contains the personal information of individuals other than the appellant, and not of the appellant, the discretion in section 38(b) does not apply. The appellant is not entitled to this information.

With respect to section 14(3)(d), I am satisfied that information on pages 567, 583 and 600 falls under this presumption, as it reveals aspects of an individual's educational history. As the appellant's own personal information is not found on these pages, section 38(b) has no application and accordingly, these pages are exempt from disclosure.

I note that the appellant has, in her representations, made reference to her inability to properly pursue her civil claim against the TCHC because of the denial of information from her tenancy file. In another case, these circumstances might be a relevant criterion in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy (see section 14(2)(d), relating to a "fair determination of rights"). However, as I have explained above, it has been established that once a presumption against disclosure under section 14(3) has been found applicable, it cannot be rebutted by either one or a combination of the factors set out in 14(2).

In conclusion, I find that disclosure of the information on pages 567, 583, 588 and 600 and certain portions of 153 to 154, 155 to 156, 404 and 589 would constitute an unjustified invasion of personal privacy. I uphold the City's decision to deny access to this information under the provisions of section 14(1), or section 38(b) in conjunction with section 14(1).

ORDER:

1. I uphold the decision of the City to withhold access to pages 3 to 13, 18 to 20, 22 to 28, 251 to 252, 253 to 255, 257 to 260, 477 to 482, 485, 486, 489 to 490, 540 to 541, 550 to 551, 567, 583, 588, 600 and the severed portions of pages 153 to 154, 155 to 156 and 589.

2. I uphold the decision of the City to withhold access to the severed portion of page 404, with the exception of one portion which I order disclosed to the appellant.

3. I order the City to disclose pages 1, 2, 21, 219, 568 and the severed portions of 394, 420 and 464.

4. For greater certainty, I have sent the TCHC a copy of page 404 with the portion to be withheld from the appellant highlighted.

5. Disclosure of the information in Provisions 2 and 3 of this order is to be made by sending a copy of the records in Provision 3, and the record in Provision 1 as severed according to my direction, to the appellant by **December 3, 2002**. In order to verify compliance with the provisions of this order, I reserve the right to require the TCHC to provide me with a copy of the records disclosed to the appellant pursuant to Provisions 2 and 3.

Original signed by: November 4, 2002
Sherry Liang
Adjudicator